

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
Tampa Division**

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

SAMI AMIN AL-ARIAN, et al.

Defendants.

**SAMI AMIN AL-ARIAN'S MOTION FOR CHANGE OF VENUE AND  
INCORPORATED MEMORANDUM OF LAW**

COMES NOW the Accused, Dr. Sami Amin Al-Arian, by undersigned counsel, and moves this Honorable Court to change the venue to outside the state of Florida in the above-styled criminal action. This request is made pursuant to Federal Rule of Criminal Procedure 21(a). In support of his request, the Accused shows this Honorable Court as follows:

**Statement of Facts**

Sami Al-Arian was indicted on February 20, 2003 amid a storm of considerable publicity. The videotape of his arrest, characterized by the usual "perp walk", has been shown throughout the community countless times and is currently shown whenever any event occurs in any way related to this prosecution. His sole comment to the waiting press regarding his arrest, "It's all about politics", has also been replayed on local radio and television innumerable times. However, the publicity surrounding Dr. Al-Arian began a decade ago, two days after the Oklahoma City bombing tragedy. Almost immediately after the tragic events in Oklahoma, the local print media began a campaign

to discredit Dr. Al-Arian. This campaign began with the assertion that Dr. Al-Arian was involved in the Oklahoma City bombing, despite the fact that it was quickly established that the Oklahoma City bombing was never tied to persons of Middle East descent. The story regarding Dr. Al-Arian's involvement was never retracted, but in fact, this story has been the springboard from which the print media in Tampa has associated Dr. Al-Arian with every act of terrorism that has occurred on American soil. The fact that this association has been determined to be untrue has not deterred the media from continuing the assault with the obvious prejudicial effects observed in the questionnaires.

Prior to trial, this Court sent out 500 questionnaires to prospective jurors. Only 328 responses were returned.<sup>1</sup> Of that number, a significant portion of the jury panel (155 jurors) was already dismissed because of the evidence of serious bias and prejudice revealed by the questionnaires. However, 55 jurors remained in the jury pool, over the defense objection, who displayed similar, overt prejudices.( Affidavit of Professor Neil Vidmar, Attached as *Exhibit A*).<sup>2</sup> As will be discussed in more detail below, the continued media harangue has infected this community in such a manner with regard to Dr. Al-Arian that a significant portion of the community believe him to be guilty. The substantial bias established overwhelmingly in the questionnaires make a change of venue both appropriate and necessary.

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<sup>1</sup> The Juror Administrator for the Middle District of Florida, Tampa Division, in a response to undersigned counsel for the Accused, refused to provide any information regarding the status of the remaining juror questionnaires. We are concerned that those missing 172 responses may further evidence issues of prejudice against Dr. Al-Arian based on the widespread prejudicial publicity.

<sup>2</sup> Please see Professor Neil Vidmar, Affidavit, Appendix A, Curriculum Vita of Neil Vidmar, and Appendix B, Edited Responses of Selected Jurors (referred collectively as Exhibit A)

### **Argument and Citation to Authority**

In order to insure an Accused's right to a fair trial, free from prejudice, Federal Rule of Criminal Procedure 21(a) provides:

For Prejudice. Upon the defendant's motion, the court must transfer the proceeding against that defendant to another district if the court is satisfied that so great a prejudice against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there.

Accordingly, this rule permits an Accused to request a change of venue in a criminal case when he believes a fair and impartial jury cannot be obtained in the district where the alleged crime was committed.

The district court has discretion when deciding whether to change venue or delay the trial because of prejudicial pretrial publicity. Ehrlichman v. Sirica, 419 U.S. 1310, 1312 (1974); U.S. v. Williams, 523 F.2d 1203, 1208 (5<sup>th</sup> Cir. 1975).<sup>3</sup> The standards governing a change of venue are derived from the due process clause of the Fourteenth Amendment, which safeguards a defendant's Sixth Amendment right to be tried by "a panel of impartial, 'indifferent' jurors." See Coleman v. Kemp, 778 F.2d 1487, 1542 (11<sup>th</sup> Cir. 1985), cert. denied, 476 US. 1164, 106 S.Ct. 2289, 90 L.Ed.2d 730 (1986), citing Irvin v. Dodd, 366 U.S. 717, 722, 81 S.Ct. 1639, 1642, 6 L.Ed.2d 751 (1961). Furthermore, the Supreme Court of the United States has recognized that there are instances where a trial court may be unable to seat an impartial jury because of

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<sup>3</sup> In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11<sup>th</sup> Cir. 1981) (*en banc*), this Court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

prejudicial pretrial publicity or inflamed community atmosphere. In such a case, due process requires the trial court to grant a defendant's motion for a change of venue. Rideau v. Louisiana, 373 U.S. 723, 726, 83 S.Ct. 1417, 1419, 10 L.Ed.2d 663 (1963); see also Coleman, 778 F.2d at 1542. At issue in such circumstances is the fundamental fairness of the Accused's trial. Id; see also Murphy v. Florida, 421 U.S. 794, 799, 95 S.Ct. 2031, 2035, 44 L.Ed.2d 589 (1975).

Courts have developed two tests for a change of venue motion based upon prejudicial pretrial publicity: "actual prejudice," as discussed in Irvin v. Dodd, *supra*, or "inherent prejudice," as explained in Murphy v. Florida, *supra*. The standards governing the change of venue issue in the Eleventh Circuit were explained in Coleman v. Zant, 708 F.2d 541, 544 (11th Cir. 1983). To justify a change of venue under Rule 21(a), one of these two standards must be met.

Actual prejudice occurs when "the prejudice actually enters the jury box and affects the jurors." Heath v. Jones, 941 F.2d 1126, 1134 (11th Cir. 1991). When actual prejudice is alleged, the court must examine the totality of the circumstances to determine the extent of the prejudice. In order for a petitioner to prevail under the standard of "actual prejudice," he must demonstrate that some of the jurors who served on his jury had a preconceived notion as to his guilt that they could not lay aside. Johnson v. Kemp, 759 F.2d 1503, 1510 (11th Cir. 1985).

In light of the current procedural posture of Dr. Al-Arian's case, his challenge to venue rests on the "presumed prejudice" standard. To establish that pretrial publicity prejudiced an accused without an actual showing of prejudice in the jury box, he must show: (1) that the pretrial publicity was sufficiently prejudicial and inflammatory, and (2) that the prejudicial pretrial publicity saturated the community where the trial was being

held. See Bundy v. Dugger, 850 F.2d 1402, 1424 (11th Cir. 1988); Coleman v. Kemp, 778 F.2d 1487, 1490 (11<sup>th</sup> Cir. 1985); Rideau v. Louisiana, 373 U.S. 723, 83 S. Ct. 1417, 10 L. Ed. 2d 663 (1963). Thus, the focus of this motion is whether the prejudicial and inflammatory pretrial publicity against Dr. Al-Arian in the Middle District of Florida is such that he cannot obtain a fair and impartial trial in any court in this district.

In the present case, there is ample evidence to establish the existence of inherent prejudice to the Accused. First, the intense and widespread prejudicial publicity which has surrounded Dr. Al-Arian for the last ten years, mounted primarily by the local newspaper, the Tampa Tribune, has saturated the community to the extent it is impossible to sit a fair impartial jury in this case. At the forefront of the publicity is the notion that somehow the community of Tampa, Florida was unsafe because of the presence of Sami Al-Arian. The hints of imminent attacks, as suggested by the Tampa Tribune, somehow related to Dr. Al-Arian, through his alleged associations with different persons, further engendered a fear and paranoia, which continues to this day. Second, the recent Senatorial campaign in 2004 created even more publicity by exploiting Dr. Al-Arian's status for the personal political gain on the part of the candidates. Third, the juror questionnaires revealed in no uncertain terms that jurors on Dr. Al-Arian's jury panel harbor real and actual, explicit prejudices against Dr. Al-Arian personally, and Muslims and Palestinians in general, that clearly will prevent this jury from being fair and impartial. As a result, the prejudicial and inflammatory nature of the pretrial publicity concerning Dr. Al-Arian will necessarily prevent him from receiving a fair and impartial jury in the Middle District of Florida.

A. Widespread Prejudicial and Inflammatory Coverage By the Tampa Tribune  
And Other Local Media

Two days after the Oklahoma City bombing case, the Tampa Tribune published an article advancing the now discredited theory that Islamic militants may have been responsible for that act of domestic terrorism. Tribune staff writer Michael Fechter wrote that the tragedy was “almost an anniversary replay of the car that devastated the U.S. Embassy in Beirut on April 18, 1983, killing 62 people, including 17 Americans. A suicide bomber who was part of a group of Shiite Muslim extremists drove a truck loaded with explosives into the compound.” Inexplicably, in the same article he then pointed out that Dr. Al-Arian had been identified as the head of an “Islamic Jihad support group.”<sup>4</sup> Without explicitly drawing the connection, the author made clear his view that these items were connected. No other mainstream media made such a connection and, ultimately, Timothy McVeigh and Terry Nichols were arrested and Oklahoma City proved to be an act undertaken by homegrown terrorists. To date, the Tribune has never remarked that its attempt to connect Dr. Al-Arian with Oklahoma City was in error. However, the coverage by the Tampa Tribune continued the association of Sami Al-Arian with virtually every act of violence by domestic terrorists without any evidence. However, in this case the government has gone so far as to deny Dr. Al-Arian’s personal participation in violence.<sup>5</sup>

On May 28, 1995, page 1 of the Tampa Tribune’s Sunday edition, Fechter continued his ‘exposés’ in a series of stories entitled “Ties to Terrorists.” In the headline, the words “Ties to” were dwarfed by the much larger word, “Terrorists.” Dr. Al-Arian’s

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<sup>4</sup> Tampa Tribune, “Bombing Repeats the Message Sent by Trade Center Explosion,” Page 6, April 21, 1995

<sup>5</sup> AUSA Walter Furr, Bond Hearing, Doc. 89, Tr. 3/25/03 at 127: “I said it before, I’ll say it again, there’s no allegation that any of these defendants personally participated in the commission of violent crimes. We don’t have that.”

picture was featured prominently next to the headline.<sup>6</sup> In six articles published over two days, Fechter asserted, among other things, that Dr. Al-Arian raised money for Islamic groups that killed hundreds of people around the world, and that WISE, the University of Southern Florida (“USF”) think tank associated with Dr. Al-Arian, invited known terrorists to the university campus.<sup>7</sup> To prove his point, Fechter wrote that the Sudanese leader Hassan Turabi, whom he characterized as “the leader of a terrorist state,” visited USF under Dr. Al-Arian’s watch; later he wrote that Dr. Al-Arian “lured” Turabi to USF. Conspicuously, Fechter failed to report that on the same trip, Turabi also met with Senator Nancy Kassebaum, R-Kansas, Rep. Lee Hamilton, D-Ind. and the editorial board of the Washington Post, and he spoke at both the Council on Foreign Relations and the Brookings Institution.<sup>8</sup> As another journalist observed, Mr. Fechter’s articles wove together unproven assertions, quotes from highly suspect publications, and statements taken entirely out of context.<sup>9</sup> In fact, other local papers, such as the Miami Herald, questioned the journalism of the local paper.<sup>10</sup>

Locally, however, the Tribune series, and other news reports both in the print and electronic media, had an enormous impact, spurring local law enforcement agencies to launch investigations and searches of Dr. Al-Arian’s home and offices (see Search Warrant Affidavit: William West). When Dr. Al-Arian filed a Freedom of Information Act request to determine the justification for a delay in his citizenship application, the

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<sup>6</sup> Tampa Tribune, “Ties to Terrorists”, May 28, 1995.

<sup>7</sup> Tampa Tribune: 05/28/95 “Ties To Terrorists”

05/28/95 “Terror Law Cuts Rights, Arabs Say”

05/28/95 “Extremist Groups Agree On Goals”

05/28/95 “Terms Don’t Separate Religion, Politics”

05/29/95 “Academic Freedom Or Poor Security”

05/29/95 “Mosque Bears Martyr’s Name”

<sup>8</sup> Salon.com, “The Prime Time Smearing of Sami Al-Arian”, January 19, 2002.

<sup>9</sup> The Weekly Planet, “Hypocrisies, Double Standards and Lies”, February 26, 2003.

<sup>10</sup> The Miami Herald, “The Secret War,” March 22, 1998.

INS evidence revealed – two years later – eighteen pages of photocopied newspaper clippings from the Tampa Tribune and the Palm Beach Post.<sup>11</sup>

Although Mr. Fechter has been widely criticized by Muslims for his bias and prejudicial reporting on them, he was allowed to write a Sunday commentary for the Tampa Tribune wherein he ridiculed public sympathy for the plight of Dr. Al-Arian's brother-in-law, Mazen Al-Najjar, incarcerated for years on the basis of secret evidence.<sup>12</sup> Prejudicial and inflammatory articles about Dr. Al-Arian have appeared in the editorial pages of the Tampa Tribune, as well. In December 2001, the paper ran an editorial entitled "USF Gets Rid of a Hatemonger," referring to Dr. Al-Arian's suspension.

To foster a continuous interest in all things related to Dr. Al-Arian, the Tampa Tribune also created a special web page, a site that can still be accessed and presumably is accessed by the local community, entitled "Terrorism in Tampa?" (*Exhibit B*)<sup>13</sup>. The web page features at alternate times, photographs of Dr. Al-Arian being taken into custody by the FBI.<sup>14</sup> The more sensational titles on this website include: "Jihad locations map," "Exclusive Footage of Al-Arian Arrest," "Authorities: Al-Arian leader of Palestinian Islamic Jihad," "American's Death a Key to Case," "Extremists Groups Agree on Goals." As a result, the public accusations against Dr. Al-Arian continued and the prejudice and bias that had developed for Dr. Al-Arian continued to be instigated. It kept Dr. Al-Arian in the face of the community. This website continues to foster the belief that Sami Al-Arian is involved with terrorism and terrorists. Nowhere in the public

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<sup>11</sup> The Miami Herald, "The Secret War," March 22, 1998.

<sup>12</sup> Salon.com, "The Prime Time Smearing of Sami Al-Arian", January 19, 2002.

<sup>13</sup> Tbo.com, "Al-Arian Special Report": Website attached as Exhibit B

<sup>14</sup> Local television depicted Dr. Al-Arian's arrest by calling him a "terrorism suspect" and showing footage of him in FBI restraints. This footage was seen nationwide and has been consistently used in the Tampa Bay community in subsequent television broadcasts about other developments in the government's investigation. Exhibit B

commentary about Dr. Al-Arian is he characterized as an innocent man, or that he is entitled to the presumption of innocence. What the articles do is presume his guilt, as evidenced by the following poll.

On this website, the Tampa Tribune ran a poll that asked:

*“How do feel [sic] about the suspected terrorist arrests in Tampa?”*

The response options were:

*Better now;*

*More anxious than before;*

*Charges are unfounded;*

*Not interested.*

On the page revealing the survey results, the question is repeated, but with a significant difference. This time, the Tribune eliminated the word “suspected” so that the question read:

*“How do feel [sic] about the terrorist arrests in Tampa?”*

Removing the word “suspected” further evidenced the prejudicial and one-sided nature of the Tribune’s coverage.<sup>15</sup>

One day after Dr. Al-Arian’s arrest, the Tampa Tribune published a piece entitled “The Scorching Indictment of Sami Al-Arian.” The paper asserted that Dr. Al-Arian’s arrest ended a decade-long investigation into the “nefarious activities of the University of South Florida professor.” The article went on: “In that time, Al-Arian has become the consummate manipulator, willing to take advantage of the freedoms here - to use the

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<sup>15</sup> According to this undated poll, 60% of the participants felt “better now” after the terrorist arrests; 23% were “more anxious than before”; 6% felt the “charges are unfounded”; 9% were “not interested”. See Exhibit B

United States as a safe haven - to wreak havoc elsewhere.”<sup>16</sup> This set the tone for the coverage by the Tribune and led many to question whether the newspaper had abandoned its role as neutral observer. A recent count revealed the Tribune published 596 articles, letters and editorials that mentioned Dr. Al-Arian.<sup>17</sup>

A variety of other press sources also saturated the local community with prejudicial and inflammatory reporting about Dr. Al-Arian.<sup>18</sup> For example, in February 1996, the St. Petersburg Times quoted the self styled “terrorism expert,” Steven Emerson, as stating that some Palestinians in Tampa were directly involved in the 1993 World Trade Center bombing: “I am constrained at this point from revealing some of those details, but I can tell you they will come out in the near term. . . . [They] include money transfers, they include actual reservations and planning for the conspirators in the bombing, and they include visits back and forth between Tampa and New York and New Jersey, between officials here of the groups [operating at USF] and officials there.” Despite this dubious assertion by Emerson, there has never been an arrest of anyone in Tampa related to the World Trade Center bombing. In fact, a reporter for another local paper requested that United States Department of Justice supply any documents that pertained to ties between any Tampa resident and the World Trade Center bombing. On Aug. 4, 1998, the Office of the Deputy Attorney General responded: “Please be advised that no responsive documents were located.”<sup>19</sup>

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<sup>16</sup> Tampa Tribune, “The Scorching Indictment of Sami Al-Arian”, February 21, 2003.

<sup>17</sup> LexisNexis, 596 Tampa Tribune pieces mentioning Dr. Al-Arian as of April 24, 2005.

<sup>18</sup> LexisNexis, 575 St. Petersburg Times pieces mentioning Dr. Al-Arian as of April 24, 2005.

<sup>19</sup> Extra!, January/February 1999 issue “Steve Emerson’s Crusade” by John F. Sugg.

It is no surprise then, as evidenced by the responses to the juror questionnaires discussed below, that the prejudicial publicity in this community is so pervasive, and that the community has been inflamed against Dr. Al-Arian in a very personal and irreparable way. The inflammation of the prejudice against Dr. Al-Arian would have been bad enough if all of the media information about this were true. Here, much of the media reports were untrue and have led to statements in the questionnaires connecting Dr. Al-Arian to Al Qaeda and September 11<sup>th</sup>, 2001.

B. Florida State Senatorial Campaign  
The Primary

The Senatorial campaign continued to further inflame jurors' attitudes towards Dr. Al-Arian. In June 2004, the United Press International signaled Dr. Al-Arian's upcoming role as the hot topic in senatorial politics. The two Democratic candidates in the primary were Peter Deutsch and Betty Castor, former President of the University of South Florida. When they faced each other in a debate before the primary elections, the Deutsch campaign began referring to the University of South Florida as "Jihad University."<sup>20</sup>

Soon thereafter, the television and radio media began producing advertisements about Deutsch's allegations that Castor did not take sufficient action when she found "a terrorist in her midst." The ads, both print and television, depicted masked men with automatic weapons in garb associated with Islamic terrorists. These ads served one purpose, to frighten, provoke, and arouse the community with respect to Dr. Al-Arian, personally, and Arabs and Muslims in general. One ad contained subtitles, "Evil was in her midst and she did nothing," clearly was authorized by Peter Deutsch.<sup>21</sup>(*Exhibit C-1*).

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<sup>20</sup> UPI: "Analysis: Terrorist Probe Sparks Campaign,": June 14, 2004.

<sup>21</sup> See Negative Campaign Photos, collectively marked Exhibit C

This was a cynical manipulation of Dr. Al-Arian's situation for the sole purpose of garnering votes. These ads were published not only in Tampa but also throughout the state.

Another print advertisement, captioned "The Would Be Senator and the Terrorist," showed Dr. Al-Arian's booking photograph next to Ms. Castor's picture. The ad goes on to describe Dr. Al-Arian as an "Islamic Jihad Operative." See *Exhibit C-2*. Another ad, which appeared both on TV and in print, featured the caption: "Betty Castor, Easy on Terrorists, Putting Florida's Families At Risk." See *Exhibit C-3, C-4*. The demonization of Sami Al-Arian continued, and became increasingly inflammatory and prejudicial. By the end of the primary, a crucial issue in the Senatorial election was Dr. Al-Arian.

#### The Senate Race between Castor and Martinez

After Ms. Castor won the Democratic primary, Mel Martinez sensing vulnerability on behalf of Ms. Castor with respect to Dr. Al-Arian, instituted his own campaign of inflammatory ads, which continued to use Dr. Al-Arian as a political whipping boy. The Tampa Tribune, ever willing to participate in the sniping of Dr. Al-Arian, wrote that Castor was only responding to Martinez's negative and accusatory campaigning when she put out an ad linking him, President Bush and Dr. Al-Arian. Candidate Bush and the Accused were photographed together a number of times at the Strawberry Festival. Ms. Castor's ads pointed out that Martinez was Bush's campaign director in Florida. <sup>22</sup>Five months into the campaign, with the negative rhetoric involving Dr. Al-Arian becoming ever more strident, a St. Petersburg Times article dated October 5, 2004 featured the headline, "Senate Rivals Continue Al-Arian Duel." By this time, the

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<sup>22</sup> Tampa Tribune, "Castor, Martinez Stuck on Al-Arian in Race for Senate," October 14, 2004.

debate over the 10-year-old case had persisted into its third week, and both sides appeared to be seeking political gain at the expense of Dr. Al-Arian's right to a fair trial.

In what amounted to a blanket saturation of all media sources, Dr. Al-Arian's photograph was continually used in television ads focused on "Jihad" and terrorists. Photographs and videotaped footage of Dr. Al-Arian in handcuffs have been used regularly in almost all of the television news reports of developments in this case. Florida and the local Tampa television markets were, in particular, saturated with stories and images suggesting that the defendants are associated with terrorists and that Dr. Al-Arian, in particular, lorded over a "secret sleeper cell." File film showed people with their faces covered, holding military style firearms, normally associated with Middle Eastern terrorists, to illustrate the suggested association. (*Exhibit C-1*)

Indeed, in the first televised debate between the candidates, Tim Russert, the moderator for NBC, spent one-third of the United States Senate candidates' time on Dr. Al-Arian.<sup>23</sup> More time was spent on the Al-Arian issue than on all the other major issues confronting voters in Florida.<sup>24</sup>

### C. Juror Questionnaires Reveal Strong Prejudice Against Dr. Al-Arian

The effects of such prejudicial pretrial publicity against Dr. Al-Arian are revealed in the statements directly from the community itself in the juror questionnaires. This Court distributed a juror questionnaire to 500 persons in the Middle District of Florida. Only 328 questionnaires were returned. (See *Footnote 1*). The high non-response rate, 34.4%, is of great concern for the Accused. Professor Neil Vidmar, Russell M. Robinson II Professor of Law at Duke Law School and Professor of Psychology at Duke

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<sup>23</sup> See Senate Debate Issues and Answers, Tampa Tribune, October 24, 2004 (noting that Tim Russert moderated the debate.)

<sup>24</sup> Tampa Tribune, "It Seems They Don't Talk to Us as Floridians" October 19, 2004.

University, (who has provided an Affidavit, Appendix, Vita, Attached hereto as *Exhibit A*) notes that the following questions are extremely important in evaluating the non-response rate:

1. Whether some people didn't respond because of the length of the trial, or because of its controversiality, or because they were afraid?
2. Was it because their minds may already have been made up about the case?
3. Also important is whether the failure of those persons to respond distorts the representativeness of the jury pool in some unknown way?
4. Is the demographic makeup of the persons who responded different from responses to jury summonses in other jury trials, particularly high profile trials?

The 26 page questionnaire consisted of 83 questions and was an inquiry into many things, including but not limited to the jurors' biographies, education, military experience, and their feelings about Muslims, Palestinians, and Arabs, September 11, 2001, and their exposure to media coverage of the Accused and its affect on their ability to be fair and impartial jurors. The jurors' responses appear to be exceedingly candid, perhaps because their identities were kept confidential. A large percentage of jurors wrote that based on the publicity surrounding this case, they had already formed an opinion that Dr. Al-Arian is guilty. The following is a sample of responses to the juror questionnaire. Each of the responses below are from jurors who **remain** on the jury panel despite a challenge for cause by the defense.

- a) In response to five different questions on whether he had formed an opinion regarding the guilt or innocence of Dr. Al-Arian, one juror wrote the word "guilty" five separate times;
- b) Another juror who wrote she had already formed an opinion of "guilt" about Dr. Al-Arian also wrote that a person could not be patriotic and criticize the

United States if that criticism “did not support our government” and if the criticism was too severe;

- c) Another juror wrote she had “read and heard enough in the media that [she] had already formed an opinion”. That opinion was “guilty.”
- d) Another juror wrote that she was “shocked a terrorist lives in my community;”
- e) One juror wrote that she was ... “shocked that he was teaching at USF and glad he wasn’t teaching a child of mine...”
- f) Another juror described Dr. Al-Arian as a “hatemonger;”
- g) One juror wrote of Dr. Al-Arian: “He funded the September 11, 2001 attack;”
- h) Another juror wrote that he had “feelings of contempt” against Palestinians, Arabs, and Muslims;
- i) A number of jurors wrote that free speech did not extend to non-citizens; one juror wrote “... let them go back to their own country;”
- j) In discussing the inquiry launched by the University of South Florida, one juror wrote that “Betty Castor had her head in the sand;”
- k) One juror wrote that she “...doesn’t believe what Sami Al-Arian said;”
- l) The same juror who wrote that Dr. Al-Arian “should not be teaching our children” also wrote she could be fair to the government but not the defense;
- m) Another juror answered a question as follows: If he is a terrorist supporter, “...he should be sentenced to death;”

- n) Several jurors responded that criticism of United States foreign policy “was not protected free speech;”
- o) While in agreement that an accused person’s silence cannot be used against him, one juror wrote: “I agree this practice is best, but more cases would be settled faster if prosecutors could call them as witnesses;”
- p) A few jurors wrote that “Palestinians hate Americans;”
- q) One juror wrote he believed that “Sami Al-Arian funneled funds to Al Qaeda;”
- r) A courageous juror wrote: “I do believe they should get a fair trial but I don’t believe I should decide part of their verdict”
- s) Another juror wrote that he could not be completely fair and impartial to the defendants in this case because “...the charges the Government has (sic) brought to these men are for a reason;”
- t) Based on what a juror’s reactions or impressions were to what he read or heard, one wrote: “That Dr. Al-Arian hates the U.S. & Israel, and even though he has lived with those he hates for more than 20 years. He is the worst type of hypocrite.” Before hearing any evidence, the juror wrote that he believes Dr. Al-Arian is “guilty;”
- u) One juror wrote that he believed “...Sami Al-Arian and his supporters are liars, terrorists, and use freedoms for terrorist activities,” and that “I think it’s evident that Al-Arian supports terrorism...” and, further, that he had already formed an opinion of “guilt” without hearing any evidence, but he

claimed he could not think of one reason why he could not be fair and impartial to Dr. Al-Arian;

- v) One juror actually wrote: "...Given heightened awareness of terrorism and violence in the Middle East, I don't know how Dr. Al-Arian will get a fair and unbiased trial in this country."

The following chart illustrates the jurors' responses to the Court's questionnaires, which reveal potential bias:<sup>25</sup>

US v. Sami Al-Arian  
SUMMARY OF QUESTIONNAIRE RESPONSES RE: POTENTIAL BIAS  
TOTAL JURORS: 322

QUESTIONS	Number of Responses
32: Experience that would cause bias against Muslim defendant where allegations of support for terrorists	63
35: Difficult to listen w/open mind & render fair verdict in case w/Muslims, Arabs or Palestinians charged w/acts of terrorism	119
44 & 45: Senate Primary/Race – Would make it difficult to sit as fair juror	112
48: Saw, read or heard something that would interfere with ability to render fair verdict based solely on evidence in court	85
49: Opinion: Guilty	104
51 & 52: Middle East Conflict – Would make it difficult to sit as fair juror	83 + 81 Unsure
75 & 76: If doesn't testify, more likely guilty	109
81 & 82: Reason jurors cannot be fair to defense	112

NOTE A: 81 jurors marked Q52 "Unsure". If they said they were unsure whether the opinion on Middle East Conflict would make it difficult for them to sit as a fair and impartial juror – no matter if they answered all other questions favorable to the defense – they were NOT included as jurors with No Bias.

NOTE B: 27 jurors marked Q76 "Yes" but answered no other questions unfavorable to the defense. They were included as jurors with No Bias.

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<sup>25</sup> This chart was composed in the beginning of the defense analysis of bias. The final numbers vary slightly.

Number of Hardship Requests: 176

Number with No Bias, i.e., answered questions above favorable to defense: 115

Number with Hardship Requests and No Bias: 45

As these juror responses show, not only have a majority of the potential jurors made up their mind that Dr. Al-Arian is guilty based on “what they have seen, read or heard,” but the pressure to convict him in this community would be tremendous. As Professor Vidmar has found, the community harbors many persons with deep and hostile attitudes toward Dr. Al-Arian. Moreover, the fact that he is a long time resident of the community heightens a sense of personal relevance to the community and affects community attitudes. Professor Vidmar further relates that such deep set negative community attitudes could influence even those jurors who would otherwise try to be impartial by influencing the way “that they perceive and integrate trial evidence or consider the effect of a not guilty verdict on the community or the family, social and work settings in which they interact in their daily lives.” (*Exhibit A*)

The survey responses also show that many persons hold strong prejudicial attitudes toward persons who are perceived to be Arab or Moslem, or who are otherwise perceived to be connected to the Middle East. Many jurors report that they believe that Moslems and persons of perceived Arab descent are seen to be disproportionately more violent than members of other ethnic groups. Some of this prejudice appears a result of personal contact with persons of Middle Eastern descent in the Tampa Bay area community that is exacerbated by connecting them with the terrorist attack on America on September 11, 2001. Some juror respondents suggest that non-citizens residents with

Middle East backgrounds should be deported and that while American citizens have the right to remain silent the privilege does not extend to non-citizens. (*Exhibit A*)

In an analysis of this type of prejudice and what it can do to an individual juror, how their deliberative process is thwarted, it is instructive to look to the case wherein right wing domestic terrorists were convicted for the bombing of Oklahoma City. In an Order, which granted a Change of Venue Motion in the Oklahoma City bombing case, Feb. 20, 1996, Judge Richard Matsch wrote eloquently:

The existence of such a prejudice is difficult to prove. Indeed it may go unrecognized in those who are affected by it. The prejudice that may deny a fair- trial is not limited to a bias or discriminatory attitude. It includes an impairment of the deliberative process of deductive reasoning from evidentiary facts resulting from an attribution to something not included in the evidence. That something has its most powerful effect if it generates strong emotional responses and fits into a pattern of normative values.

The possible prejudicial impact of this type of publicity is not something measurable by any objective standards. ... There is no laboratory experiment that can come close to duplicating the trial of criminal charges. There are so many variables involved that no two trials can be compared regardless of apparent similarities. That is the very genius of the American jury trial.

*Trust in the ability of jurors to exercise discipline to disregard prior prejudicial awareness diminishes when the prior exposure is such that it evokes strong emotional responses or such an identification with those directly affected by the conduct at issue that the jurors feel a personal stake in the outcome. That is also true when there is such identification with a community point of view that jurors feel a sense of obligation to reach a result which will find general acceptance in the relevant audience.*

Judge Richard Matsch, United States v. McVeigh and Nichols, Feb. 20, 1996  
(emphasis added.) Order on Change of Venue.

## CONCLUSION

There is no dispute that these potential jurors, and the Tampa community as a whole, have been exposed to and affected by the widespread pretrial publicity directed at Dr. Al-Arian. It is clear from the answers to the questionnaires that Dr. Al-Arian cannot receive a fair trial in the Tampa community. The breadth of negative sentiment against Dr. Al-Arian is both wide and deep. The likelihood is that the two most sacred principles of the American jury trial, the presumption of innocence and burden of proof have long ago been sacrificed at the altar of prejudice, bias and racism with respect to Dr. Al-Arian. A trial in Tampa, Florida under these circumstances, while it might have the appearances of what our system requires, would be one of appearances only without substance.

WHEREFORE, the Accused, by and through undersigned counsel, requests this Court grant the Motion for Change of Venue and transfer this matter outside the State of Florida.

Dated: 29 April 2005

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29<sup>th</sup> April 2005, a true and correct copy of the foregoing has been furnished, by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Kevin Beck, Assistant Federal Public Defender, M. Allison Guagliardo, Assistant Federal Public Defender, counsel for Hatim Fariz; Bruce Howie, Counsel for Ghassan Ballut, and to Stephen N. Bernstein, Counsel for Sameeh Hammoudeh.

/s/ Linda Moreno  
Linda Moreno  
Attorney for Sami Al-Arian